

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AARON HOWARD, individually and on behalf of all others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES INC., *et al.*,

Defendants.

No. 08 Civ. 2804 (RWS)

ESTELLE WEBER, individually, on behalf of the Bear Stearns Companies Inc. Employee Stock Ownership Plan, and all others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES INC., *et al.*,

Defendants.

No. 08 Civ. 2870 (RWS)

ANTHONY PISANO, individually and on behalf of all others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES INC., *et al.*,

Defendants.

No. 08 Civ. 3006 (UA)

HANS MENOS, individually and on behalf of all others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES INC., *et al.*,

Defendants.

No. 08 Civ. 3035 (RWS)

IRA GEWIRTZ, individually and on behalf of all others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES INC., *et al.*,

Defendants.

No. 08 Civ. 3089 (RWS)

DREW V. LOUNSBURY, individually and on behalf of all others similarly situated,	No. 08 Civ. 3326 (RWS)
Plaintiff, v. THE BEAR STEARNS COMPANIES INC., <i>et al.</i> , Defendants.	
SHELDEN GREENBERG, individually and on behalf of all others similarly situated,	No. 08 Civ. 3334 (RWS)
Plaintiff, v. THE BEAR STEARNS COMPANIES INC., <i>et al.</i> , Defendants.	
SCOTT WETTERSTEN, individually and on behalf of all others similarly situated,	No. 08 Civ. 3351 (UA)
Plaintiff, v. THE BEAR STEARNS COMPANIES INC., <i>et al.</i> , Defendants.	
RITA RUSIN, individually and on behalf of all others similarly situated,	No. 08 Civ. 3441 (UA)
Plaintiff, v. THE BEAR STEARNS COMPANIES INC., <i>et al.</i> , Defendants.	

DEFENDANTS' RESPONSE TO MOTIONS FOR CONSOLIDATION

Nine purported ERISA class actions arising out of the same alleged operative facts concerning The Bear Stearns Companies Inc. are pending before this Court. Plaintiffs in six of these cases (*Weber, Pisano, Gewirtz, Howard, Greenberg and Lounsbury*) have sensibly moved for consolidation of these actions.

Defendants agree that these nine ERISA cases, and any subsequently filed ERISA cases raising similar substantive allegations, should be consolidated. Because all of these cases raise similar allegations under ERISA, consolidation would promote the interests of the parties and the court. Separate litigation, on the other hand, would risk confusion, delay and inconsistent results.

Defendants also agree that – as reflected in the proposed order submitted by the *Weber* plaintiffs – defendants should be excused from answering, moving, or otherwise responding to any of the individual complaints in the above-captioned actions (*Weber* proposed pretrial order at 7) and that – as reflected in the proposed order submitted by the *Weber* and *Howard* plaintiffs – the parties should confer regarding the schedule for the filing of a consolidated amended complaint and for defendants to answer, move, or otherwise respond to the consolidated amended complaint (*Weber* proposed pretrial order at 7, *Howard* proposed pretrial order at 4-5).

Defendants take no position on the requests by the *Weber*, *Howard*, and *Lounsbury* plaintiffs for appointment of interim lead plaintiffs or interim lead counsel. We respectfully reserve the right to oppose any motion that relates to class certification, and to take discovery regarding class issues. *See, e.g., Weltz v. Lee*, 199 F.R.D. 129, 133-34 (S.D.N.Y. 2001) (appointing lead plaintiffs and lead counsel, without precluding any party from contesting class certification).

Defendants object, however, to one provision in the proposed orders submitted by each of the *Weber* and *Howard* plaintiffs which purports to impose on defendants discovery obligations that are inconsistent with the Federal Rules. These proposed orders seek to require defendants to produce, within 14 days of the entry of the

proposed order, a substantial volume of documents, including materials that describe the operation, administration, and management of the plan; identify the plan fiduciaries and describe the scope of their fiduciary duties; and constitute board or committee minutes and resolutions. (*See Weber* proposed pretrial order at 6-7; *Howard* proposed pretrial order at 4-5.)

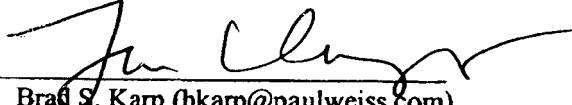
These provisions are inconsistent with Federal Rule of Civil Procedure 26(d), under which discovery is stayed pending the parties' Rule 26(f) conference. Moreover, as the consolidation papers state, certain plaintiffs have exercised their right under ERISA § 104(b) to seek documents related to the ERISA plan at issue, and defendants will be producing those materials promptly. Given plaintiffs' ability to obtain those materials, there is no good reason to make an exception to usual and orderly discovery procedures.

We note that various named defendants have not been served with process in certain of the above-captioned actions. This submission is without waiver of any and all defenses, objections or arguments the named defendants may have, including, but not limited to, lack of personal jurisdiction, improper venue, lack or insufficiency of process, or lack or insufficiency of service of process. *See, e.g., Arthur Williams, Inc. v. Helbig*, No. 00 Civ. 2169, 2001 U.S. Dist. LEXIS 6576, at *7 (S.D.N.Y. May 21, 2001); *Howard v. Klynveld Peat Marwick Goerdeler*, 977 F. Supp. 654, 659-60 (S.D.N.Y. 1997).

Finally, defendants note that plaintiff in *Lounsbury* includes in his motion papers a tendentious statement of the case, and allegations concerning the identity of plan fiduciaries. Given the early stage of this litigation, we do not address those allegations, other than to note our disagreement with them.

Dated: April 14, 2008
New York, New York

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

By: 

Brad S. Karp (bkarp@paulweiss.com)

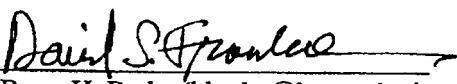
Lewis R. Clayton (lclayton@paulweiss.com)

1285 Avenue of the Americas
New York, New York 10019-6064
Tel. (212) 373-3000
Fax (212) 757-3980

Paul J. Ondrasik, Jr.
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
Tel. (202) 429-8088
Fax (202) 429-3902

Attorneys for Defendants The Bear Stearns Companies Inc., The Bear Stearns Companies Inc. Executive Committee, and Custodial Trust Company

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By: 

Barry H. Berke (bberke@kramerlevin.com)

David S. Frankel (dfrankel@kramerlevin.com)

1177 Avenue of the Americas
New York, New York 10036
Tel. (212) 715-9100
Fax (212) 715-8000

Attorneys for Defendant James E. Cayne

SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP

By: Jay Kasner /omp
Jay Kasner (jay.kasner@skadden.com)

4 Times Square
New York, New York 10036-6522
Tel. (212) 735-3000
Fax (212) 735-2000

Attorneys for Defendant Alan D. Schwartz

SIMPSON THACHER & BARTLETT LLP

By: Michael J. Chepiga
Michael Chepiga (mchepiga@stblaw.com)

425 Lexington Avenue
New York, New York 10017
Tel. (212) 455-2000
Fax (212) 455-2502

Attorneys for Defendant Samuel L. Molinaro, Jr.

SCHULTE ROTH & ZABEL LLP

By: _____
Ronald Richman (ronald.richman@srz.com)
Alan Glickman (alan.glickman@srz.com)

919 Third Avenue
New York, New York 10022
Tel. (212) 756-2000
Fax (212) 593-5955

Attorneys for Defendant Alan C. Greenberg

SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP

By: _____
Jay Kasner (jay.kasner@skadden.com)

4 Times Square
New York, New York 10036-6522
Tel. (212) 735-3000
Fax (212) 735-2000

Attorneys for Defendant Alan D. Schwartz

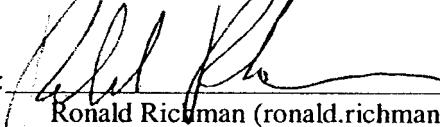
SIMPSON THACHER & BARTLETT LLP

By: _____
Michael Chepiga (mchepiga@stblaw.com)

425 Lexington Avenue
New York, New York 10017
Tel. (212) 455-2000
Fax (212) 455-2502

Attorneys for Defendant Samuel L. Molinaro, Jr.

SCHULTE ROTH & ZABEL LLP

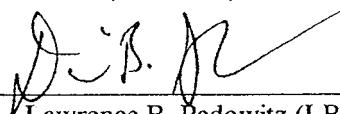
By: 
Ronald Richman (ronald.richman@srz.com)
Alan Glickman (alan.glickman@srz.com)

919 Third Avenue
New York, New York 10022
Tel. (212) 756-2000
Fax (212) 593-5955

Attorneys for Defendant Alan C. Greenberg

WACHTELL, LIPTON, ROSEN & KATZ

By:



Lawrence B. Pedowitz (LBPedowitz@wlrk.com)

David B. Anders (DBAnders@wlrk.com)

51 West 52nd Street
New York, New York 10019
Tel. (212) 403-1000
Fax (212) 403-2000

Attorneys for Defendant Warren J. Spector

SHEARMAN & STERLING LLP

By:

Steven Molo (smolo@shearman.com)

599 Lexington Avenue
New York, New York 10022
Tel. (212) 848-4000
Fax (212) 848-7179

Attorneys for Defendant Jeffrey Mayer

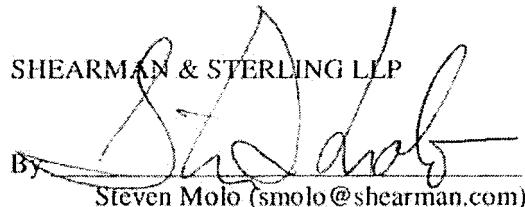
WACHTELL, LIPTON, ROSEN & KATZ

By:

Lawrence B. Pedowitz (LBPedowitz@wlrk.com)
David B. Anders (DBAnders@wlrk.com)

51 West 52nd Street
New York, New York 10019
Tel. (212) 403-1000
Fax (212) 403-2000

Attorneys for Defendant Warren J. Spector

SHEARMAN & STERLING LLP

By _____
Steven Molo (smolo@shearman.com)

599 Lexington Avenue
New York, New York 10022
Tel. (212) 848-4000
Fax (212) 848-7179

Attorneys for Defendant Jeffrey Mayer

AFFIDAVIT OF SERVICE BY FIRST CLASS MAIL

STATE OF NEW YORK)
)
 :ss
COUNTY OF NEW YORK)

Dytonia Reed, being duly sworn, deposes and says:

1. I am not a party to this action, am over 18 years of age and am employed by Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019.
2. On April 14, 2007, I served a true copy of the foregoing DEFENDANTS' RESPONSE TO MOTIONS FOR CONSOLIDATION on the following:

Barry H. Berke, Esq.

David S. Frankel, Esq.

KRAMER LEVIN NAFTALIS & FRANKEL LLP
1177 Avenue of the Americas
New York, NY 10036

Jay Kasner, Esq.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
4 Times Square
New York, NY 10036

Michael Chepiga, Esq.

SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, NY 10017

Ronald Richman, Esq.

Alan Glickman, Esq.

SCHULTE ROTH & ZABEL LLP
919 Third Avenue
New York, NY 10022

Lawrence B. Pedowitz, Esq.

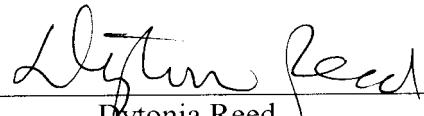
David B. Anders, Esq.

WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, NY 10019

Steven Molo, Esq.
SHEARMAN & STERLING LLP
599 Lexington Avenue
New York, NY 10022

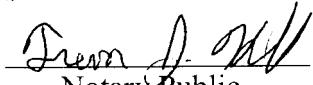
Daniel S. Taub, Esq.
BEAR STEARNS & CO., INC.
383 Madison Avenue
New York, NY 10179

3. I made such service by personally enclosing a true copy of the aforementioned document in a properly addressed prepaid wrapper and depositing it into an official depository under the exclusive custody and care of the United States Postal Service in the State of New York.



Dyttonia Reed

Sworn to before me this
14th day of April 2008



Trevor J. Hill
Notary Public

TREVOR J. HILL
Notary Public, State of New York
No. 01HIC181594
Qualified in Bronx County
Commission Expires February 4, 2012